

**CITY OF LAKE ELMO  
WASHINGTON COUNTY  
STATE OF MINNESOTA**

**RESOLUTION NO. 2019- 039**

*A RESOLUTION AUTHORIZING A SETTLEMENT AGREEMENT FOR THE CITY'S LAWSUIT  
AGAINST 3M COMPANY ("3M") PENDING IN UNITED STATES DISTRICT COURT  
RELATING TO THE PRESENCE OF PERFLUOROCHEMICALS ("PFCs") IN THE CITY'S  
MUNICIPAL WATER SUPPLY*

**WHEREAS**, pursuant to Resolution No. 2016-62, on July 28, 2016, the City filed a complaint in United States District Court for the District of Minnesota titled *City of Lake Elmo v. 3M Company*, File No. 0:16-cv-2557 ("Action"), in which it alleged that 3M Company ("3M") was responsible for the presence of perfluoroochemicals ("PFCs") in groundwater that supplies the City's municipal water system and that the presence of such PFCs caused the City to incur significant costs to design and construct an alternative water distribution system; and

**WHEREAS**, to avoid continued distraction and expense, the City and 3M have reached a proposed agreement to resolve the Action and all counterclaims made by 3M against the City ("Agreement", copy attached).

**WHEREAS**, the City Council finds that the terms of the Agreement are in the best interest of the City;

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor, City staff and the City's legal counsel are authorized and directed to execute the Agreement and take all actions necessary to implement the terms of the Agreement; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City's legal counsel is authorized to make non-substantive revisions to the Agreement without obtaining further authorization from the City Council.

This resolution was adopted by the City Council of the City of Lake Elmo on this 21<sup>st</sup> of May, 2019.

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Mike Pearson, Mayor

ATTEST:

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Julie Johnson, City Clerk

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into as of this 22nd day of May, 2019, by and among the following Parties:

- (1) City of Lake Elmo (the “City”), a Minnesota municipal corporation; and
- (2) 3M Company (“3M”), a Delaware corporation.

The City and 3M together are the “Parties.”

### **RECITALS**

This Agreement is made and entered into with regard to the following facts:

**WHEREAS**, disputes have arisen between the Parties relating to 3M’s disposals of materials containing PFAS (defined below in Paragraph 6) at several sites located in Washington County, Minnesota, and to whether PFAS has been released from those disposal sites and contaminated the groundwater from which the City obtains water for its municipal water system; and

**WHEREAS**, there is presently pending between the Parties in the United States District Court for the District of Minnesota (the “Court”) a lawsuit entitled *City of Lake Elmo v. 3M Company*, File No. 0:16-cv-2557-ADM-DTS (the “Action”); and

**WHEREAS**, in order to avoid continued distraction and expense, the Parties are desirous of resolving their disputes, the Action, and all claims and counterclaims that were or could have been asserted by either of them against the other of them relating to PFAS;

**NOW, THEREFORE**, for the valuable consideration described below, the receipt and sufficiency of which hereby are expressly acknowledged, the Parties mutually agree as follows:

### **TERMS**

#### **Recitals**

1. The Recitals above are incorporated into and are material terms of this Agreement.

#### **Payments and Transfers**

2. Within twenty (20) days after the complete execution of this Agreement, 3M will:

- (a) pay to the order of the City of Lake Elmo the sum of Two Million Seven Hundred Thousand Dollars (\$2,700,000);
- (b) execute and deliver to the City of Lake Elmo limited warranty deed(s) for the parcels of land located in the City that have PID 16.029.21.24.0002, PID 16.029.21.23.0003, and PID 16.029.21.23.0004, and that in total comprise approximately 180.25 acres (collectively, the “Parcels”). The Parties agree that the total value of the Parcels is One Million Eight Hundred Thousand Dollars (\$1,800,000); and
- (c) execute and deliver to the City of Lake Elmo an assignment of the farm lease between 3M and Jeff Keene, dated January 4, 2006, and all renewals and amendments thereto (“Farm Lease”), in a form approved by the City.

3. In connection with the conveyance(s) provided in Subparagraph 2(b), the City agrees to pay all recording fees, deed taxes, and title insurance costs; 3M agrees to pay a share of the 2019 real estate taxes, as pro-rated from January 1, 2019 to the date of conveyance; and both Parties agree to pay their own closing costs. The City acknowledges that it has received a reliance letter from Barr Engineering that covers Barr Engineering’s environmental assessments for the Parcels.

4. The Parties agree that the consideration paid and given by 3M, as described in Paragraph 2, is in restitution for alleged contamination of groundwater, and that no portion of it constitutes a fine, penalty, punitive damages, disgorgement of profits, or an amount paid in settlement of any claim for any of the foregoing.

### **Dismissal**

5. Within three (3) days after the complete execution of this Agreement, the Parties will enter into a Stipulation of Dismissal With Prejudice agreeing to dismiss the Action, and all claims and counterclaims that were or could have been asserted therein, with prejudice and on the merits, with each Party to bear its own costs, disbursements, and attorneys’ fees. The Parties further agree to seek an order from the Court dismissing the Action in accordance with the terms of their Stipulation of Dismissal With Prejudice.

### **Releases and Covenants Not To Sue**

6. As used in this Agreement, the term “PFAS” means fluorinated organic substances that contain one or more carbon atoms on which at least one of the hydrogen atoms has been replaced by a fluorine substituent. The term “PFAS” includes, without limitation, perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonate (“PFOS”), perfluorobutanoate (“PFBA”), perfluorobutane sulfonate (“PFBS”), perfluorohexane-1-sulphonic acid (“PFHxS”), perfluoro-n-pentanoic acid (“PFPeA”), and perfluorohexanoic

acid (“PFHxA”). It is the intention of this Agreement that the definition of “PFAS” be as broad, expansive, and inclusive as possible.

7. The City of Lake Elmo, on its own behalf and on behalf of each of its past, present, and future elected officials, employees, administrators, managers, agents, representatives, attorneys, insurers, predecessors, successors, and assigns, and any person or entity that has or claims to have rights through any of them (collectively, “City Releasing Parties”), does hereby voluntarily release and forever discharge 3M Company, and all and each of its past, present, and future officers, directors, shareholders, employees, agents, representatives, attorneys, insurers, predecessors, successors, and assigns, and all affiliated, parent, and subsidiary companies and divisions (collectively, “3M Released Parties”), of and from any and all claims, liabilities, demands, actions, and causes of action, of every kind and nature whatsoever, whether known or unknown, existing or not existing, asserted or unasserted, liquidated or unliquidated, absolute or contingent, direct or derivative, in law or in equity, which the City Releasing Parties have ever had, presently have, or may in the future have or claim to have, against the 3M Released Parties, or any of them, based in whole or in part upon, relating to, or existing by reason of, any of the following: (a) the facts, acts, omissions, or failures to act that were or could have been alleged in the Action; (b) 3M’s manufacture, sale, or disposals of PFAS or any PFAS-containing products; and (c) the presence of PFAS in the City’s groundwater, surface water, or soils, or in the City’s water supply, property, equipment, or distribution system. All of the above are the “Released City Claims.”

8. The City Releasing Parties hereby covenant and agree not to sue or bring any legal or equitable claim of any kind, or to cause any such claims to be brought, against the 3M Released Parties on any of the Released City Claims, or on any claims that might arise in the future based in whole or in part upon: (a) 3M’s manufacture, sale, or disposals of PFAS or any PFAS-containing products; and (b) the presence of PFAS in the City’s groundwater, surface water, or soils, or in the City’s water supply, property, equipment, or distribution system.

9. 3M, on its own behalf and on behalf of each of its past, present, and future officers, directors, shareholders, employees, agents, representatives, attorneys, insurers, predecessors, successors, and assigns, and all affiliated, parent, and subsidiary companies and divisions (collectively, “3M Releasing Parties”), does hereby voluntarily release and forever discharge the City, and all and each of its past, present, and future elected officials, employees, administrators, managers, agents, representatives, attorneys, insurers, predecessors, successors, and assigns (collectively, “City Released Parties”), of and from any and all claims, liabilities, demands, actions, and causes of action, of every kind and nature whatsoever, whether known or unknown, existing or not existing, asserted or unasserted, liquidated or unliquidated, absolute or contingent, direct or derivative, in law or in equity, which the 3M Releasing Parties have ever had, presently have, or may in the future have or claim to have, against the City Released Parties, or any of them, based in whole or in part upon, relating to, or existing by reason of, any of the following: (a) the facts, acts, omissions, or failures to act that were or could have been alleged in the Action; and (b) the City’s

ownership or operation of the Washington County Landfill. All of the above are the “Released 3M Claims.”

10. The 3M Releasing Parties hereby covenant and agree not to sue or bring any legal or equitable claim of any kind, or to cause any such claims to be brought, against the City Released Parties on any of the Released 3M Claims, or on any claims that might arise in the future based in whole or in part upon the City’s ownership or operation of the Washington County Landfill.

#### **Disclosure of Settlement and Public Relations**

11. The Parties will jointly issue a press release agreed to by the Parties announcing the resolution of the Action. The Parties each agree not to disparage the other or its business or environmental practices relating to any and all matters that were the subject of the Action in any public forum, including media or public meetings. The Parties further agree not to incite or induce the media or any other entity or individual to disparage the other or its business or environmental practices relating to any and all matters that were the subject of the Action.

#### **No Admission Of Liability**

12. It is expressly acknowledged and agreed that 3M at all times has denied, and still denies, liability for the claims and allegations asserted by the City, and that the amount being paid, and the other consideration being given, are being paid, given, and accepted in compromise and full settlement of disputed claims. Neither this Agreement nor the settlement provided herein is, may be construed as, or may be used as, an admission by or against the 3M Released Parties of any fault, wrongdoing, or liability whatsoever.

#### **Other Provisions**

13. This Agreement constitutes the entire agreement of the Parties concerning the subject matter hereof. It may not be supplemented or changed orally.

14. Nothing in this Agreement is intended to release or should be treated as releasing any rights or claims either Party has or may have against the State of Minnesota, or any of its agencies, departments, officials, employees, or representatives. Nothing in this Agreement is intended to preclude, hinder, or prevent the City from submitting claims against the fund established under the February 20, 2018 Agreement and Order (“NRD Settlement”) in the lawsuit entitled *State of Minnesota, by its Attorney General, et al. v. 3M Company*, File No. 27-CV-10-28862, Hennepin County District Court, Fourth Judicial District, State of Minnesota. The City reserves all rights to submit claims as permitted by the NRD Settlement, including but not limited to claims allowed by paragraphs 14 and 19 of the NRD Settlement. 3M agrees not to take a position in the working group for the NRD Settlement that the consideration it has paid to the City under this Agreement should be a set-off against any claims that City makes against the NRD Settlement fund.

15. No breach of any provision of this Agreement by any Party can be waived by the other Party, unless expressly done so in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provisions hereof.

16. The provisions of this Agreement are not severable.

17. The Parties and their respective counsel have reviewed this Agreement, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

18. Each Party acknowledges and represents that it has had the opportunity to consult with legal, financial, engineering, environmental, and other professional advisors as it deems appropriate in connection with its consideration and execution of this Agreement. Each Party further represents and declares that in executing this Agreement, it has relied solely upon its own judgment, belief, and knowledge, and the advice and recommendation of its own professional advisors, concerning the nature, extent and duration of its rights, obligations, and claims, and that it has not been influenced to any extent whatsoever in executing this Agreement by any representations or statements made by the other Party or its representatives, except those expressly contained or referred to herein.

19. This Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Parties.

20. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Minnesota.

21. Any disputes or claims under this Agreement shall be submitted exclusively first to mandatory mediation before The Honorable Kevin J. Burke prior to and as a condition of either Party's filing suit seeking relief in state or federal court. The Parties shall mediate in good faith until a resolution is reached or an impasse declared by the mediator. In the event of Judge Burke's absence or lack of availability, the Parties shall select an alternative mediator.

22. This Agreement may be executed in counterparts, each of which shall be deemed to be one and the same instrument. The Parties shall exchange among themselves signed counterparts. A signature exchanged by email shall be effective as an original.

**CITY OF LAKE ELMO**

By \_\_\_\_\_  
Mike Pearson  
Its Mayor

By \_\_\_\_\_  
Julie Johnson  
Its City Clerk

STATE OF MINNESOTA        )  
                                )  
                                ) ss.  
COUNTY OF WASHINGTON      )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May, 2019, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to authority granted by its City Council.

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Notary Public

\* \* \*

**3M COMPANY**

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF MINNESOTA    )  
                            )  
                            ) ss.  
COUNTY OF RAMSEY     )

On this \_\_\_\_ day of May, 2019, before me a Notary Public of the State of Minnesota, appeared \_\_\_\_\_, to me personally known to be the person whose name is subscribed to this document, who being duly sworn did depose and say that he/she is duly authorized to execute this document on behalf of said corporation and to bind the corporation thereto; and that he/she signed his/her name hereto on behalf of the corporation and by like authority.

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Notary Public

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